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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 24th August 1955

S.R.O. 1904.—Whereas the election of Thakur Jugal Kishore Sinha as a member of the House of the People from the Muzaffarpur North West Constituency of that House has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Chandreshwar Narayan Prasad Sinha, son of Babu Bishwanath Prasad Sinha, Village Bhandari, P.O. Bhandari, P. S. Belsand, District Muzaffarpur;

S.
No.

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, PATNA

PRESENT:—Shri Basu Prasad, Retired District Judge—*Chairman*.
Shri Hargobind Prasad Sinha, Retired District Judge—*Member*.
Shri Aditya Naryan Lal, Advocate—*Member*.

ELECTION PETITION No. 5 OF 1953

In the matter of bye-election from the Muzaffarpur North West Parliamentary Constituency of the House of People.

Chandreshwar Narayan Prasad Sinha, resident of village Bhandari, P. S. Belsand, District Muzaffarpur—*Petitioner*.

Versus

1. Thakur Jugal Kishore Sinha, resident of village Dumri, P.S. Majorganj, District Muzaffarpur—*Respondent 1st Party*.

2. Baijnath Prasad Verma, Muzaffarpur Municipality, District Muzaffarpur.

3. Bujhawan Shah, resident of village Sasoula Khurd, P.S. Sheohar, District Muzaffarpur.

4. Mathura Prasad Sinha, Mokhtear Sitamarhi Court, District Muzaffarpur.

5. Ramanand Sinha, resident of village Chhatauni, P.S. Belsand, District Muzaffarpur.

6. Lachhuman Mahton, Ward No. 1, Sitamarhi Municipality, District Muzaffarpur.

7. Chandrika Sinha, resident of village Chupra, P.S. Belsand, District Muzaffarpur—*Respondents 2nd Party*.

For Petitioner

1. Shri A. N. Chakravarty, Advocate.
2. Shri Kedar Nath Thakur, Advocate.

For Respondent 1st Party

1. Shri Ranen Roy Advocate.
2. Shri Pradyumna Narain Singh, Advocate.

Shri Chandreshwar Narayan Prasad Sinha, who was a candidate at the bye-election to the House of People from the Muzaffarpur North West Parliamentary Constituency, has filed this petition under section 81 of the Representation of People Act, 1951, calling in question the election of respondent No. 1.

The petitioner had been elected to be a member of the House of People from the said Constituency during the last General Election. The election of the petitioner was, however, declared to be void by the Election Tribunal and, consequently, a bye-election was held in the constituency on the 8th March, 1953. The petitioner and the respondents were nominated as candidates at the bye-election but, subsequently, the nomination of respondent No. 3 was rejected at the time of scrutiny of the nomination papers by the Returning Officer and respondents Nos. 2, 4, 5 and 7 withdrew their candidatures. Thus, the only contestants were the petitioner and respondents Nos. 1 and 6. The poll was held on the appointed date (8th March, 1953) and as a result of the counting of votes, respondent No. 1, who secured the maximum number of votes, was declared to have been elected and his election was published in the Official Gazette.

The petitioner alleges that general coercion or general intimidation had been exercised or resorted to by members of the Rajput community and by respondent No. 1 and his adherents on members of the Rajput community, group or section to vote for the said respondent (respondent No. 1) and on members of the backward and/or scheduled and and/or depressed castes and also on the Muslims not to vote for the petitioner and to vote for the said respondent, or at any rate, to refrain from voting at all. Full particulars of this general coercion or general intimidation are set out in Annexure "A".

The petitioner also alleges that respondent No. 1 and his agents were guilty of the corrupt practice of procuring motor trucks for the conveyance of electors to and from certain polling stations. Full particulars of this corrupt practice are set out in Annexure "B".

The petitioner, further, alleges that respondent No. 1 and his agent were guilty of the corrupt practice of bribery by payment of gratification to electors for voting for the said respondent and/or by employing persons to induce or attempt to induce electors to vote for the said respondent on payment of gratification or refrain from voting at all. Full particulars of such corrupt practice are set out in Annexure "C".

The petitioner, then, states that respondent No. 1 knowingly made false declaration respecting the election expenses, the particulars of which are set out in Annexure "D".

The petitioner, lastly, states that the result of the election has been materially affected by non-compliance with (i) the provisions of Article 326 of the Constitution of India, read with the Representation of the People Act, 1950, and the Rules relating to the election; (ii) the provisions of section 62 of the Representation of the People Act, 1951; (iii) the direction of the Election Commission given under Rule 16 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, read with section 56 of the Act, 1951; (iv) the provisions of Rule 17 of the Representation of the People Rules, 1951; (v) the provisions of Rule 46 of the said Rules; (vi) the provisions of Rule 24 (8) of the Representation of the People Rules, 1950. The material facts relating to the non-compliance have been stated in Annexure "E" and also in sub-paragraphs (iii), (iv) and (vi) of paragraph 10 of the election petition.

On the above allegations, the petitioner prays (i) for a declaration that the election is wholly void, or (ii) for a declaration that the election of the returned candidate, namely, respondent No. 1, is void, and (iii) for costs.

The following particulars are set out in the annexures and in the above mentioned sub-paragraphs of paragraph 10 of the election petition.

Annexure A. 1.—On 26th February, 1953 at villages Chupra, Pachra and Aura, on 27th February, 1953 at village Sonaul and on 6th March, 1953 at villages Rampur Gangoli and Riga, respondent No. 1 exhorted members of Rajput community to throw their full weight for success of a candidate of their community by preaching and inculcating upon them feelings of casteism and general feeling of hatred and contempt towards members of other castes and communities, especially against petitioner, and, thereby, enlisted influential members of his caste including Jamuna Singh and Chandriks Singh of Chupra, Mosafir Singh of Pachra, Pradeep Singh of Aura and Asarfi Singh of Sonaul who openly threatened or intimidated voters of their villages and canvassed votes of members of Rajput community on rank communal basis and also threatened members of other communities with dire consequences if they would not vote for respondent No. 1 and chose to vote for petitioner.

2. Rambaran Singh, agent of respondent No. 1, canvassed support for the latter throughout the Constituency and preached and spread rank communal feelings at villages Lalgah Kararia, Aura and Amawan on 16th February, 1953; at Pachra, Chhatauni and Tuniahi on 17th February, 1953; and at Chupra, Kundal, Marar, Dumra and Nunaura on 18th February, 1953.

3. Respondent No. 1, accompanied by Mewa Lal Singh, Rambaran Singh and Kisundeo Jha, threatened electors of villages Narayanpur, Miradpur, Bhawa Prasad and Bishwanathpur on 2nd March, 1953 and electors of villages Mehsaul, Koili, Rupauli and Bhalha Bhalhi on 3rd March, 1953.

Annexure B.—On the day of polling (8th March, 1953), Devaki Prasad Jaiswal, Kisundeo Jha and Rambaran Singh, with the connivance of respondent No. 1, procured motor trucks for the conveyance of electors, such as, Sub Narayan Roy, Rajendra Roy and Sultan Mian of village Mirjadpur, Narayan Shah, Radhakant Misir and Anand Misir of village Jafarpur, to and from their respective polling stations.

Annexure C. 1.—On 8th March, 1953, Asarfi Singh, with connivance of respondent No. 1, paid money to electors, such as, Raghunath Singh of village Nayagaon and Ramchandrar Singh of village Rampur Barahia, to vote for respondent No. 1.

2. On 26th January, 1953, respondent No. 1 employed Rambaran Singh and Mewa Lal Singh to go around the constituency and induce electors to vote for him (respondent No. 1) even on payment of gratification who, accordingly, attempted to procure and procured votes for the said candidate on payment of such gratification.

Annexure D. 1.—On 2nd March, 1953, respondent No. 1 collected at villages Lagma and Kharan rice and cash for fighting election, but such collection has not been entered in his election expenses.

2. On 22nd February, 1953 and 23rd February, 1953, Ramanand Sinha, adherent of respondent No. 1, collected at villages Chhatauni, Pachra and Narwara rice and cash for fighting election, but such collection has not been mentioned in election expenses.

Annexure E.—(a) With reference to sub-paragraph (i) of paragraph 10 of election petition, it is stated that the first Electoral Roll of the Constituency, prepared in 1950, continued in force until 30th September, 1952 and the revised electoral roll prepared in 1952 was published on 31st January, 1953. On the material dates of the bye-election, two different electoral rolls were in existence and as such the election was held and conducted on the basis of varying electoral rolls.

(b) With reference to sub-paragraph (ii) of paragraph 10 of election petition, it is stated that

(aa) persons entered in electoral rolls of villages Murgichak, Asogi Chupra (Barwajhakar, Barwa Loharwa) and Akhtabazar, hamlets of village Akhta, and village Gamharia could not vote at the bye-election due to failure of the authorities concerned to assign to such electors any polling station;

(bb) persons entered in electoral roll of village Sonar (polling station No. 1343) could not vote on account of the failure of the Returning Officer to supply the Presiding Officer of the said polling station with the list of voters. The Presiding Officer, having been supplied only with

- the corrigenda, did not grant ballot papers to a large number of electors whose names were not found in the corrigenda;
- (cc) electors of villages Khairwa (240), Patahi (237), Pakri (273), Basatpurpakri (278) and Gamharia could not vote on account of failure of the Returning Officer to supply the electoral rolls of the said villages to the Presiding Officers;
 - (dd) on account of misprint in the name of the post office of village Akhta on various pages of the electoral roll, electors of that village were not allowed by the Presiding Officer to cast their votes;
 - (ee) electors assigned to polling booths, Basatpur M.E. school (149), Khairwa L.P. school (135) and Pakri U.P. school (153) could not vote on account of the irregularities referred to in sub-paragraph (iii) of paragraph 10 of election petition;
 - (ff) electors of villages Bel, Gunja, Birti, Sekhauna, Dumarwana, Sheonagar, Baigania Bazar and Akhta could not vote as lists of electors were not hung up at the polling stations and also because no care had been taken to assign polling booths with due regard to the situation of the places of abode of the voters;
 - (gg) generally, electors of the said constituency were not given adequate notice of the polling proposal in as much as polling proposal was published only 3 days before the date of the poll.

(c) With reference to sub-paragraph (iii) of paragraph 10 of election petition, it is stated that contrary to the direction of the Election Commission and the consequent announcement, poll was held at Basatpur U.P. school, and not at Basatpur M.E. school (149); at Khairwa (240), and not at Khairwa L.P. school (135); and at Pakri Sanskrit Pathshala, and not at Pakri U.P. school (153), without obtaining the approval of the Election Commission for the change or without any notification, announcement or publicity in respect thereof.

The particulars stated in sub-paragraphs (iii), (iv) and (vi) of paragraph 10 of election petition are as follows:

In sub-paragraph (iii) of paragraph 10 of election petition, it is stated that the non-compliance with the provisions of Rule 16, read with section 56, related to booth No. 149 fixed at Basatpur M.E. school, booth No. 135 fixed at Khairwa L.P. school and booth No. 153 fixed at Pakri U.P. school.

In sub-paragraph (iv) of paragraph 10, it is stated that non-compliance with the provisions of Rule 17 was by reason of fixing of booths at wide and inconspicuous distances at various polling stations, such as Pachnaur L.P. school, Asogi Pursottam, Bhakurahr, Nandwara, Jamuan and Parsauni and thus rendering it impossible for Presiding Officers to regulate and supervise polling.

In sub-paragraph (vi) of paragraph 10, it is stated that the non-compliance with the provisions of Rule 24(6) was by reason of the fact that electoral roll supplied to petitioner on one occasion was incomplete and, on his next attempt to secure the same, the finally published electoral roll was not supplied, but instead thereof, the old roll was issued again.

The election petition is resisted by respondent No. 1, the returned candidate, who has filed a written statement contending that the election petition as framed is not maintainable in as much as it is not in accordance with the provisions of the various sections in Chapter II of Part VI of the Representation of the People Act, 1951. He also contends that the election petition has not been signed and verified in accordance with the provisions of the Civil Procedure Code.

The respondent, further, contends that the allegations of general coercion or general intimidation are vague, wrong and baseless and he denies those allegations. He also denies the allegations of (i) corrupt practice of procuring motor trucks for conveyance of electors, (ii) corrupt practice of bribery, and (iii) corrupt practice of knowingly making false declaration respecting the election expenses. He states that he took all reasonable means at his disposal for preventing the commission of corrupt or illegal practices at the election.

The respondent also denies that there was non-compliance with the provisions of the Constitution and the election laws and rules and he asserts that there was full compliance with the said provisions. He then states that, in any case, the result of the election has not been materially affected by the alleged non-compliance.

Respondent No. 3 filed a separate written statement contending that the order of the Returning Officer rejecting his nomination was illegal and consequently the election held was void. This respondent, however, was not present at the hearing.

The following issues have been framed.

ISSUES

1. Is the election petition as framed maintainable?
2. Is the election petition signed and verified according to law? If not, is the petition liable to be dismissed summarily?
3. Did respondent No. 1 or his agent or any other person with the connivance of respondent No. 1 or his agent commit corrupt practices as alleged? If so, has the result of the election been materially affected thereby?
4. Was there any non-compliance with the provisions of the Constitution or of the Representation of the People Act or of the rules under the Act? If so, has the result of the election been materially affected thereby?
5. Was there any violation of the orders of the Election Commission with regard to place of polling? If so, has the result of the election been materially affected thereby?
6. Was general coercion or general intimidation exercised by members of the Rajput Community and by respondent No. 1 and his adherents as alleged?
7. Is the election in the constituency in question wholly void?
8. Is the election of respondent No. 1 void?

FINDINGS

Issue No. 1.—The election petition has been framed in accordance with the provisions of the various sections in Chapter II of Part VI of the Representation of the People Act, 1951. This issue is, therefore, answered in the affirmative.

Issue No. 2.—It has been urged on behalf of the respondent that the election petition has not been signed and verified according to law and so the election petition is liable to be dismissed summarily. The contention of the respondent is that the signatures and verifications were made on blank papers and the matters were composed and typed on those blank papers after the petitioner had signed and written verifications. There is no direct or even sufficient circumstantial evidence on which a finding accepting the respondent's contention can be made. On the other hand, the petitioner (P.W. 17) has stated in his evidence "It is not a fact that I put my signature on blank papers and that the body of the election petition was subsequently typed on those papers without my knowing the contents thereof".

The learned advocate for the respondent has drawn the attention of the Tribunal to the fact that the election petition, as also the various annexures, were signed and verified on the 29th April, 1953. In paragraph 9 of the election petition, there is an allegation that the respondent knowingly made false declaration respecting the election expenses, the particulars in respect whereof are set out in Annexure "D". It has been pointed out that respondent No. 1 made declaration regarding election expenses on the 1st May, 1953 and that the Return of election expenses was lodged on the 2nd May, 1953 (*vide* exts. D and 6). So, it has been argued, it was not possible for the petitioner to make allegation of false declaration respecting election expenses and to give particulars of such false declaration on the 29th April, 1953. But on this circumstantial evidence alone it cannot be held that the signatures and verifications were made on blank papers. It is possible that the petitioner, somehow or other, might have got information regarding the election expenses of the respondent and the preparation of the Return respecting the election expenses on or before the 29th April, 1953. The petitioner states in the verification that the statements made in paragraph 9 of the election petition and in annexure "D" are matters of belief based on information. The petitioner was not cross-examined on the source of information. It is also possible that the information, which the petitioner might have received on or before the 29th April, 1953, was not correct, but the petitioner believed it to be true.

Prima facie: the signatures are in order and the verifications are in accordance with the provisions of Order 6, Rule 15, Code of Civil Procedure, and so the election petition cannot be dismissed summarily.

Issue No. 6.—This issue relates to the allegations made in paragraph 6 of the election petition and annexure "A" of the list. In paragraph 6 of the election

petition the allegation is that general coercion or general intimidation was exercised by members of the Rajput community on (i) members of the same community, and (ii) on members of the backward, scheduled and depressed castes and also on the Muslims. So far as coercion or intimidation by members of the Rajput community on members of the backward, scheduled and depressed castes and on the Muslims is concerned the matter is within the scope of section 100(1)(b) of the Act. But coercion or intimidation by members of the Rajput community on members of the same community is not a matter within the scope of the section 100(1)(b). Section 100(1)(b) provides "If the Tribunal is of opinion that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section, to vote or not to vote in any particular way at the election, the Tribunal shall declare the election to be wholly void". This section, thus, speaks of general coercion or general intimidation by any particular community, group or section on another community, group or section.

In first part of paragraph 1 of annexure "A", the allegation is that respondent no. 1 and certain influential members of his caste exhorted the members of the Rajput community to vote for the Rajput candidate and canvassed votes of the members of the Rajput community on rank communal basis. This is a matter, not covered by section 100(1)(b) of the Act, but is a matter constituting a corrupt practice within the meaning of section 124(5) of the Act. We shall deal with this section hereafter. The second part of paragraph 1 of annexure "A", which says that respondent No. 1 and certain influential members of his caste threatened the members of other communities with dire consequences if they would not vote for respondent No. 1 and chose to vote for the petitioner, contains some matter which may be within the purview of section 100(1)(b) of the Act. The allegation contained in paragraph 2 of annexure "A" also constitutes a corrupt practice within the meaning of section 124(5) of the Act. Paragraph 3 of annexure "A" speaks of threats to electors of certain villages; it does not say that such threats were given by members of the Rajput community to members of other communities. The threats alleged may be a corrupt practice of "undue influence" within the meaning of section 123(2) of the Act. "Undue influence", as defined in section 123(2), includes threat of injury of any kind. If a corrupt practice of "undue influence" has been committed by a candidate or his agent or by any other person with the connivance of the candidate or his agent, the Tribunal can declare the election of the returned candidate to be void under section 100(2)(b) of the Act. But if the giving of threats extensively prevailed at the election and the election was not a free election by reason thereof, it may be a ground for declaring the election to be wholly void under section 100(1)(a) of the Act. Section 100(1)(a) provides "If the Tribunal is of opinion that the election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election, the Tribunal shall declare the election to be wholly void". It is noteworthy that, while the term "undue influence" has been used in clause (a) of section 100(1), the term "coercion" or "intimidation" has been used in clause (b) of that section. "Undue influence", as stated above, has been defined in section 123(2) of the Act, but "coercion" or "intimidation" has not been defined in the Representation of the People Act, 1951. It has been contended by the learned advocate for the petitioner that element of threat is also included in "coercion" or "intimidation". Although the petitioner has employed the terms, "coercion" and "intimidation", but has not employed the term, "undue influence", in paragraph 6 of the election petition, some of the statements in annexure "A" have been interpreted by the petitioner to mean that "undue influence" extensively prevailed at the election. So, the petitioner relies upon both the clauses, (a) and (b), of section 100(1) of the Act.

Now, let us examine the evidence adduced by the petitioner on the question of general coercion or general intimidation, contemplated by section 100(1)(b) of the Act, or on the question of undue influence extensively prevailing, contemplated by section 100(1)(a). It may be noted that, although the term "community", used in section 100(1)(b), is a term of larger import than "caste", the petitioner has adduced some evidence on the point that there was coercion or intimidation by members of the Rajput caste upon members of other castes.

P.W. 3 (Mahabir Mahto of village Pachnaur) has deposed that 8 or 10 days before the date of poll (i.e., on 26th February 1953 or 28th February 1953) Bilat Singh, an influential Rajput of his village, exhorted the people of his village to vote for Thakur Jugal Kishore (respondent No. 1) as the contest was between the Bhumihar and the Rajput. It may be mentioned that the petitioner is Bhumihar by caste and respondent No. 1 is Rajput by caste. When the witness (P.W. 3) declared that the people of his village had decided to vote for the Congress

candidate (i.e., the petitioner), Bilat Singh got enraged and threatened by saying "If you do not vote for a candidate of my community, I shall take away *Batai* lands from you and shall not advance you any loan of money" Mahabir Mahto was not a Rajput and from his evidence it appears that 25 or 30 persons of his village had been so threatened. It has not been shown that those persons were *Bataidars* of Bilat Singh or used to borrow money from him. In the cross examination, the witness has said that the majority of his co-villagers earn their livelihood by working as labourers. It is, therefore, hardly possible that Bilat Singh should have held out such threats. The evidence of this witness does not appear to be convincing that there is no other evidence to corroborate his statement. It is worthy of note that Bilat Singh had been appointed a polling agent of the petitioner for Pachnaur U.P. school polling booth on 5th March 1953 (*vide* Ext. H). It does not seem possible that on 5th March 1953 the petitioner should have appointed as his polling agent a man who was making such propaganda against him a few days earlier. It is also worthy of note that neither the village Pachnaur, nor Bilat Singh, has been named in annexure "A". The evidence of this witness cannot, therefore, be relied upon.

P.W. 7 (Ambika Tiwari) is resident of village Bhaudiha and is Brahmin by caste. He says that 10 or 15 days before the date of poll, while he was going to village Sonbarsa, he saw on the way, at village Aura, 200 or 300 Rajputs assembled in a field and in that gathering respondent no. 1 exhorted them to vote for the Rajput candidate as the fight was between the Bhumihars and the Rajputs. This may be a correct practice contemplated by section 124(5) of the Act, but this is not within the scope of section 100(1)(b) or section 100(1)(a). The witness says further that Pradeep Singh threatened people of lower castes at Aura. He threatened by saying that if they voted for the Congress candidate, they would be assaulted and driven away from the village, Pradeep Singh was, admittedly, a worker of respondent no. 1 in the bye-election. The witness has stated in his cross examination that he does not know the names of the labourers who were being intimidated by Pradeep Singh. None of those persons has been examined, nor is there any other corroborative evidence on this point. We are not prepared to accept the evidence of this witness as reliable.

P.W. 12 (Mohammad Wakil Khan) is resident of village Akhta, Tola Laharwa, and is Mohammadan by caste. He has deposed that 5 or 6 days before the date of the poll respondent no. 1, Harihar Singh and Babu Lal Singh went to him. Harihar Singh, on being told by the witness that the people of his village would vote for the Congress candidate, said "This fight is between the Rajputs and the Bhumihars". Babu Lal Singh threatened by saying "If you do not vote for the Socialist candidate (i.e., respondent no. 1), you will be treated badly." Respondent no. 1 said "If you do not vote for me, then do not go to the polling station at all". The witness says further that he did not go to cast his vote on account of the above threat. We are not impressed with the evidence of this witness and there is also want of corroborative evidence to support his statement. It may be noted that the names of Harihar Singh and Babu Lal Singh and the name of village Akhta have not been stated in annexure "A". No finding in favour of the petitioner can be based on the evidence of this witness.

P.W. 14 (Ramchandra Asopuri) is Yadav by caste and he belongs to village Asopuri. He says that he worked as teacher in Sonaul H. E. school in February and March, 1953. According to this witness, Asarfi Singh, who was also a teacher in that school, took him to the house of one Ramcharitra Singh at Sonaul on 27th February 1953 and there he found Thakur Jugal Kishore (respondent no. 1) addressing a gathering of 15 or 20 Rajputs and saying "There is fight between Rajputs and Bhumihars at the bye-election and we should see that Bhumihar is defeated. You should give votes in my favour and secure votes in my favour from people of other communities". This is an appeal to vote on grounds of caste and may come within the mischief of section 124(5) of the Act. The witness says further that on 28th February 1953 Asarfi Singh visited his village (Asopuri) and exhorted the Rajputs to vote for the Rajput candidate and he also said to the voters belonging to Kandu, Kurmi and Dhanuk castes "You will have to vote for Thakur Jugal Kishore". From the latter statement it does not clearly appear that any undue influence, coercion or intimidation was brought by Asarfi Singh upon members of Kurmi, Kandu and Dhanuk castes. The former statement of the witness relates to appeal to vote on grounds of caste.

P.W. 17 (petitioner) has said in his evidence that respondent no. 1 and his workers were canvassing votes on communal line; they demanded votes from the Rajputs saying that the Rajputs should vote for the Rajput candidate. It has already been observed above that such canvassing on grounds of caste may come within the mischief of section 124(5) of the Act, but does not come within the

mischief of clause (a) or clause (b) of section 100(1). The witness has further said that respondent no. 1 and his workers threatened voters, other than the Rajputs, with assault and other kinds of injury if they would not vote for the Rajput candidate. From the cross examination of this witness it appears that he has no personal knowledge about the alleged threats; his statement about the threats is based upon information received by him from other people. The evidence of this witness, therefore, has very little evidentiary value.

P.W. 18 (Kali Prasad Singh) is Rajput by caste and belongs to village Bhaudiha. He has deposed that propaganda was done on behalf of respondent no. 1 that the Rajputs should vote for the Rajput candidate and that voters should be compelled to vote for him. It is not clear from his evidence in what manner voters were to be compelled. From the cross examination of the witness it appears that the only propaganda that was done in his presence was that Thakur Jugal Kishore being a Rajput should win the election in any way. Such propaganda may not come within the mischief of clause (a) or clause (b) of section 100(1) of the Act. The witness has further said that Kurmis, Dusadhs and other voters of lower castes were being threatened by Rajputs who said that if they would not vote for Thakur Jugal Kishore, their *Batai* lands would be taken away and they would be assaulted and harassed in all possible ways. He has not named any voter who was so threatened. No such voter has been examined to corroborate his statement. We do not, therefore, consider his evidence to be worthy of reliance.

This is all the evidence on behalf of the petition. We consider that the evidence is not only unworthy of belief but is also far too short of proving (i) general coercion or general intimidation as contemplated by section 100(1)(b) of the Act, or (ii) undue influence extensively prevailing, as contemplated by section 100(1)(a). It has not been established that the election was not a free election by reason of the alleged coercion or intimidation or by reason of the alleged undue influence. To establish that the election has not been a free election, it must be shown that undue influence, coercion or intimidation permeated the whole constituency. The petitioner has miserably failed to show any such thing.

On behalf of the respondent, Thakur Jugal Kishore Sinha (R.W. 1), Asarfi Singh (R.W. 3) and Hardeo Singh (R.W. 4) have deposed on this point. R.W. 1 had made a general denial by saying that there was no propaganda for votes on his behalf on communal basis and no threat was held out to any voter by him or by any of his workers. R.W. 3 has denied that he did any canvassing on communal basis or that he threatened any man of any caste with assault or any other kind of injury if he did not vote for respondent no. 1. R.W. 4 has deposed that Pradeep Singh and Mosafir Singh never threatened any voter and never demanded votes on communal lines. From his evidence it appears that Pradeep Singh and Mosafir Singh used to move with him during the period of bye-election while he was canvassing votes for respondent no. 1. We do not consider it necessary to discuss at great length the evidence of the aforesaid witnesses in view of the fact that the petitioner's evidence, as discussed above, has been found to be quite insufficient and unsatisfactory.

This issue is, therefore, decided against the petitioner.

Issue No. 3.—This issue relates to the allegations set forth in paragraphs 7, 8 and 9 of the election petition and annexures "B", "C" and "D" of the list. It may at once be stated that the petitioner, at the time of the hearing of the election petition, did not press the alleged corrupt practice of making a false declaration respecting the election expenses, contemplated by section 124(4) of the Act. This corrupt practice has been alleged in paragraph 9 of the election petition and the particulars thereof have been given in annexure "D".

The petitioner has pressed the allegations regarding (i) corrupt practice of procuring motor trucks for conveyance of electors, and (ii) corrupt practice of bribery. The former corrupt practice has been alleged in paragraph 7 of the election petition and the particulars thereof have been given in annexure "B". The corrupt practice of bribery has been alleged in paragraph 8 of the election petition and the particulars thereof have been given in annexure "C".

We shall, first, deal with the corrupt practice of procuring motor trucks for the conveyance of electors. It is alleged by the petitioner that on the day of poll (8th March 1953) Devaki Prasad Jaysswal, Kishundeo Jha and Rambaran Singh, with the connivance of respondent no. 1, procured motor trucks for conveyance of electors to polling stations nos. 7, 113 and 84. When the Tribunal called for further and better particulars by disclosing the names of electors so conveyed, the petitioner

supplied 6 names, (i) Sub Narayan Roy of village Mirjapur, (ii) Rajendra Roy of village Mirjapur, (iii) Sultan Mian of village Mirjapur, (iv) Narayan Shah of village Jafarpur, (v) Radhakant Missir of village Jafarpur, and (vi) Anand Missir of village Jafarpur. It is said that the above named electors were conveyed to polling stations nos. 113 and 84. Polling station no. 84 was located at Jafarpur U.P. school and polling station No. 113 located at village Mirjapur. The petitioner has adduced some evidence in regard to polling stations nos. 84 and 113, but there is no evidence at all in regard to polling station no. 7. P.W. 2, P.W. 11, P.W. 15, P.W. 16 and P.W. 17 have deposed regarding conveyance of electors to Jafarpur and Mirjapur polling stations.

P.W. 2 (Pandit Rajkant Misra of Jafarpur) has deposed that he saw one truck carrying voters from villages Rupauli, Sauli and Kolson up to a distance of half a mile from Jafarpur U.P. school polling station. He has deposed further that Rambaran Singh worker of respondent no. 1, was in that truck. No voter has come forward to support his statement. From the cross examination of the witness it appears that he did not know Rambaran Singh from before that date (8th March 1953). So it is difficult to accept his statement that Rambaran was carrying voters in the truck.

P.W. 11 (Bhagwat Narayan Choudhary) was the Presiding Officer at Mirajpur polling station. He has simply said that one Jhulan Prasad Singh, Secretary of Sitamarhi Thana Congress Committee, filed an application (marked X for identification) before him. It is said that Jhulan Prasad Singh filed the application complaining that voters were being carried in trucks and bullock carts by Thakur Jugal Kishore Sinha. The application has not been proved, nor has Jhulan Prasad Singh been examined on behalf of the petitioner. P.W. 11 has only proved the endorsements [Exts. I and I(a)], written by him on said application. The endorsement, Ext. 1, shows that the Presiding Officer directed the complainant to find out the number of the truck. The other endorsement, Ext. I(a), shows that no truck or bullock carts were being used within 100 yds of the polling booth. P.W. 11 has stated in his cross examination that he did not see the alleged truck. The evidence of P.W. 11, therefore, is not of any substantial help to the petitioner. P.W. 11 has, further, stated in his evidence that Jhulan Prasad Singh, in pursuance of the direction given to him, found out the number of the truck and wrote the number "B.R.F. 200" on the application. In absence of the evidence of Jhulan Prasad Singh, no importance can be attached to the writing, giving the number of the truck. It is noteworthy that no witness on behalf of the petitioner has deposed that voters were being carried in a truck bearing the number, "B.R.F. 200". There is one thing very curious in the evidence of P.W. 11. He has said that after writing the endorsements, Exts. I and I(a), he returned the original application to Jhulan Prasad Singh and that he did not mention the fact of filing of this application in his report to the Returning Officer. In normal course of business, the original application should not have been returned to Jhulan Prasad Singh and the Presiding Officer should have mentioned the fact of filing of the application in his report to the Returning Officer. The evidence of this witness, therefore, is open to grave suspicion.

P.W. 15 (Sub Narayan Roy of Mirajpur) and P.W. 16 (Sultan Mian of Mirajpur) are two of the electors who are alleged to have been conveyed to the polling station in a truck. They have deposed that a truck, belonging to Babu Tirpit Narain Singh, was passing through their *Basti* when they boarded it at the request of Rambaran Singh. From their evidence it appears that their *Basti* was less than half a mile from the polling booth. It does not seem probable that they should have been asked to travel such a short distance in a truck. From the cross examination of the witnesses it appears that the truck moved up to a road, which was close to the polling booth, and it stopped on the road at a place which was visible from the polling booth. If the truck had really moved up so close to the polling booth, there was no reason why the Presiding Officer did not see the vehicle. We are not impressed with the truth of the story told by these witnesses. P.W. 17 (Chandreshwar Narain Sinha) is the petitioner himself. He has stated in his evidence that, while he was passing on a road in a Jeep, he saw a truck moving to Jafarpur polling station. There were voters in the truck and Rambaran Singh, worker of respondent no. 1, was also in the truck. From the cross examination of the witness it appears that he was sitting on the front seat in the Jeep, when he overtook the truck, but still he did not notice the number of the truck. He does not remember the colour of the truck. He cannot say if the truck was a public carrier. All these facts indicate that he had not seen the truck at all. If he had really seen the truck carrying voters, he one would expect, would have taken care to note the number of the truck, the name of the owner of the truck, the name of the driver of the truck and other particulars regarding the truck. But it is really amazing that he

did not care to note these things. The witness says that, when he reached Jafarpur polling station, he verbally complained to the Presiding Officer that voters were being carried in a truck. The Presiding Officer of Jafarpur has not been examined as a witness on behalf of the petitioner. It is noteworthy that, while the petitioner states in his verification at the foot of the election petition that the statement made by him regarding the truck is based on information, he, in the verification at the foot of annexure "B", says that the statement regarding the truck is a matter within his knowledge. Such conflict in the two verifications greatly shakes the evidence of the petitioner.

On behalf of the respondent, one Jagarnath Prasad Sahi (R.W. 2) has deposed that the truck of Babu Tirpit Narain Singh was out of order and was in a workshop one day before the date of poll and also on the date of poll. He has said that he had gone to Babu Tirpit Narain Singh to take his truck on hire, but he could not get the truck on either of the two dates because it had not been repaired. He saw the truck in the workshop on both the dates.

Rambaran Singh has not been examined by the respondent, but one Damodar Jha (R.W. 6), who worked as a polling agent of respondent No. 1 at Sitamarhi from 8 A.M. to 2 P.M., has pledged his oath saying that he saw Rambaran Singh working as a polling agent of respondent No. 1 in one of the booths at Sitamarhi polling station during that period. According to P.W. 16, Rambaran Singh was seen in the truck near Mirjapur polling station at 8 or 9 A.M. If the statement of R.W. 6 is believed—and there is no good reason to disbelieve it—then the story told by P.W. 15 and P.W. 16 cannot be accepted. We, in conclusion, find that the petitioner has failed to prove that voters were carried to Jafarpur and Mirjapur polling stations in a truck.

The relevant section dealing with this matter is section 123(6) of the Representation of the People Act, 1951. Upon reading that section it appears that the corrupt practice consists in the hiring or procuring, whether on payment or otherwise, of any vehicle by a candidate or his agent or by any other person with the connivance of the candidate or his agent for the conveyance of any elector to or from any polling station. The petitioner, in order to succeed, has to prove not only the purpose, namely, conveyance of an elector or electors, but also the hiring or procuring which is the essential ingredient of the corrupt practice. In the present case, it is alleged that the motor truck was procured with the connivance of respondent No. 1. There is no evidence worth the name to prove the alleged procuring or the alleged connivance of respondent No. 1. We, therefore, hold that the petitioner has failed to prove the alleged corrupt practice under section 123(6) of the Act.

Next, we propose to deal with the corrupt practice of bribery. It is alleged in paragraph 1 of annexure "C" that on 8th March 1953, Asarfi Singh of village Sonaul, with connivance of respondent No. 1, paid money to electors, Raghunath Singh of village Nayagaon and Ramchandra Singh of village Rampur Barahia, to vote for respondent No. 1. There is no evidence to prove the alleged payment of illegal gratification by Asarfi Singh.

In paragraph 2 of annexure "C", there is a recital indicating that the corrupt practice of bribery extensively prevailed at the election. It has already been noticed that, if it is established that the election has not been a free election by reason that the corrupt practice of bribery has extensively prevailed at the election, the election can be declared to be wholly void under section 100(1)(a) of the Act. P.W. 1, P.W. 13 and P.W. 19 have deposed on this point. The statement of P.W. 19 (Ramchandra Singh of Rampur Gangauli), that Rambaran Singh had asked him to secure votes for respondent No. 1 by offering money to voters, does not appear to be credible, in view of the fact that the witness was, admittedly, a worker of the petitioner in the bye-election. P.W. 13 (Mohammad Sanaullah of Amwa) says that 15 or 20 days before the day of polling, Rambaran Singh told him that he would pay compensation to the poor voters of his village who would lose their wages for one day by going to the polling station to vote and Bhagwat Singh told him that money was in deposit with him for that purpose. The witness says further that he did not take any money for that purpose, nor did he get any money paid to any voter. The evidence of this witness is of very shaky nature and there is no corroborative evidence to support his statement. From the cross examination of the witness it appears that he consulted 30 or 40 persons of his village in this matter, although he understood that it was a bad thing to vote on receiving money. It is difficult to believe this story. The evidence of this witness cannot be relied upon. P.W. 1 (Lakshmi Kant Shastri of Maniari) has narrated the following story. Rambaran Singh of Madhesra and Mewa Lal Singh of Sirsian, workers of respondent No. 1, visited his village one week before the date

of poll. They talked with Yagi Dutt Jha and Jagdish Mishra of his village regarding securing of votes for respondent No. 1 on payment of illegal gratification. Rambaran Singh proposed to give money to Yagi Dutt and Jagdish for securing votes on such payment. At that time Rambaran Singh had some money in his hand. Yagi Dutt and Jagdish demanded Rs. 200/- for that purpose, but Mewa Lal said that money would be paid on the next day. On the next day, the witness saw Rambaran Singh and Mewa Lal Singh, accompanied by Yagi Dutt and Jagdish, going to some voters in that village. This is the story told by P.W. 1. P.W. 1 was working on behalf of the petitioner in the by-election; he, thus, belonged to the opposite camp. It is impossible to believe that Rambaran Singh should have spoken to Yagi Dutt and Jagdish about securing votes on payment of money in the presence of, or within the hearing of, a man of the opposite camp. We consider the evidence of this witness to be unworthy of reliance.

The petitioner (P.W. 17) has also stated in his evidence that voters were paid money for voting in favour of respondent No. 1. But he has no personal knowledge about such payment. He has deposed "No such illegal gratification was paid in my presence". His evidence, therefore, is of no evidentiary value.

We, in conclusion, find that the petitioner has totally failed to prove the alleged bribery.

It has been noticed above that some of the statements in annexure "A" and some of the evidence, namely, appeal to vote or refrain from voting on grounds of caste, relate to a corrupt practice contemplated by section 124(5) of the Act. The relevant portion of the section provides that the systematic appeal to vote or to refrain from voting on grounds of caste, race, community or religion is a corrupt practice. If such corrupt practice is proved and if it is further proved that the election of the returned candidate has been procured or induced by such corrupt practice or that the result of the election has been materially affected by it, then the election of the returned candidate can be declared to be void under section 100(2)(a) of the Act. It has been pointed out by the respondent that there is no allegation of this corrupt practice in the election petition, although some particulars of this corrupt practice have been given in annexure "A". Section 83(1) of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Sub-section (2) requires that full particulars of any corrupt or illegal practice which the petitioner alleges (in the election petition) shall be set forth in a list accompanying the election petition. It has been contended by the respondent that there is no concise statement in the election petition of the material facts constituting a corrupt practice within the meaning of section 124(5) and so the evidence on this point should not be considered. There is considerable force in this contention. Although the list, giving particulars of the said corrupt practice, was filed along with the election petition, the omission in the election petition of a concise statement of the material facts regarding the corrupt practice cannot be considered as a mere technical error in the pleadings, especially in view of the fact that there is no indication at all of any such corrupt practice in the body of the election petition. Even assuming that the Tribunal should look into the evidence regarding this corrupt practice, we find that the evidence adduced by the petitioner is wholly unsatisfactory and is quite insufficient to prove the corrupt practice of systematic appeal to vote or refrain from voting on grounds of caste.

This issue is, therefore, decided against the petitioner.

Issues Nos. 4 & 5.—It is contended by the petitioner that the result of the election has been materially affected by non-compliance with the provisions of the Constitution of India, the Representation of the People Acts and the rules relating to the election. Paragraph 10 of the election petition and annexure "E" contain allegations in regard to this matter.

In sub-paragraph (i) of paragraph 10, it is alleged that there was non-compliance with the provisions of Article 326 of the Constitution, read with the Representation of the People Act, 1950 and the rules relating to the election. The relevant portion of Article 326 provides that every person who is a citizen of India and who is not less than 21 years of age and is not otherwise disqualified under the Constitution or any other law shall be entitled to be registered as a voter at the election to the House of the People. The Representation of the People Act, 1950 provides, *inter alia*, for the preparation of electoral rolls. Clause (a) of annexure "E", which purports to give material facts relating to the grounds set out in sub-paragraph (i) of paragraph 10 of the election petition, recites that the first electoral roll of the constituency prepared in 1950 continued in force upto 30th September 1952, that the revised electoral roll prepared in 1952 was published

on 31st January 1953 and that at the material dates two different electoral rolls were in existence and as such the election was held and conducted on the basis of varying electoral rolls. There is no evidence at all on behalf of the petitioner to show that the bye-election was held and conducted on the basis of varying electoral rolls. On the other hand, there is a recital in the letter (Ext. 8), dated 7th September 1953, of the Chief Electoral Officer, Bihar, addressed to the Returning Officer of the constituency which runs as follows, "Now, it appears that the electoral roll for the Sitamarhi North West Parliamentary Constituency was intensively revised in the year 1952 and that on the basis of this roll the bye-election was held in the month of March, 1953". The allegation of the petitioner on this point, therefore, fails.

In sub-paragraph (ii) of paragraph 10, it is stated that there was non-compliance with the provisions of section 62 of the Representation of the People Act, 1951 by way of disentitling electors from voting at the election. The relevant portion of section 62 provides "Every person who is, for the time being, entered in the electoral roll of any constituency shall be entitled to vote in that Constituency". There are 7 sub-paragraphs under paragraph (b) of annexure "E" dealing with this subject.

In sub-paragraph (aa) of annexure "E" the allegation is that the persons entered in the electoral rolls of villages Murgachak, Asogichupra (Barwa Jhakar, Barwa Loharwa) and Akhtabazar, hamlets of village Akhta, and village Gumharia could not vote due to failure of the authorities concerned to assign to such electors any polling station. This allegation has not been seriously pressed. There is absolute lack of evidence on this point. This allegation is, therefore rejected.

In sub-paragraph (bb) of annexure "E", it is stated that persons entered in the electoral roll of village Sonar could not vote on account of failure of the Returning Officer to supply the Presiding Officer with the list of voters. The Presiding Officer, having been supplied only with the corrigenda in respect of the electoral roll of that village, did not grant ballot papers to a large number of electors. No elector of village Sonar has been examined by the petitioner, nor is there any other evidence worth the name on this point. On the contrary, the allegation of the petitioner is negatived by the recital in the letter (Ext. 8), which has already been referred to above. This point, therefore, also fails.

Sub-paragraph (cc) of annexure "E" recites that electors of villages Khairwa (240), Patahi (237), Pakri (273), Basatpur Pakri (278) and Gamharia could not vote on account of failure of the Returning Officer to supply the electoral rolls of the said villages to the Presiding Officers. There is no evidence to prove this allegation. The allegation is, therefore, rejected.

In sub-paragraph (dd) of annexure "E", it is stated that on account of misprint in the name of the Post Office of village Akhta on various pages of the electoral roll, the electors of that village were not allowed by the Presiding Officer to cast their votes. There is no evidence on this point and this point has not been pressed. It is, therefore, rejected.

In sub-paragraph (ee) of annexure "E", it is stated that the electors assigned to the booths mentioned in sub-paragraph (iii) of paragraph 10 of the election petition could not vote on account of the irregularities referred to in the said sub-paragraph. This matter will be dealt with along with sub-paragraph (iii) of paragraph 10.

In sub-paragraph (ff) of annexure "E", it is stated that electors of certain villages could not vote as lists of voters had not been hung up at the polling stations. This point has not been pressed and is, hence, rejected.

In sub-paragraph (gg) of annexure "E", it is alleged that the polling proposal was published with inordinate delay on the 5th March, 1953, only three days before the date of the poll and so the electors of the said constituency were not given adequate notice of the polling stations. The petitioner relies upon the letter (Ext. 9) sent to him by the Returning Officer; the letter was signed by the Returning Officer on 6th March 1953. It appears that the Returning Officer forwarded, along with this letter, a copy of the printed list of polling stations for the use of the petitioner. From the printed list of polling stations (Ext. 2), which is on the record here, it does not appear on what date the list was printed, or published, but from Ext. 2(a) it appears that the Returning Officer made a formal declaration on 5th March 1953, providing the polling stations specified in the list (Ext. 2) for the said constituency. The declaration was made 3 days before the date of the poll. But from Exts. B series (Appointment Forms of Polling Agent it appears that the petitioner had appointed a large number of polling

agents for certain polling stations on 4th March 1953. The respondent has also used in evidence some village notices (Ext. I series) showing publication of names of polling stations, date of poll and hours of poll. But these notices do not show on what date they were published.

No rule has been pointed out to us showing how many days before the commencement of the poll, the list of polling stations must be published, but from rule 12 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, dealing with appointment of polling agents, it appears that the list of polling stations should be published at such a time that at least three days time, before the commencement of the poll, should be given to a candidate to appoint his polling agents. When the petitioner appointed polling agents in pursuance of rule 12, it may be presumed that the list of polling stations was published in proper time. It has, therefore, not been established that there was non-compliance with any rule touching upon the publication of the list of polling stations.

Even assuming that there was non-compliance with any such rule the petitioner cannot succeed unless it is established further that the result of the election has been materially affected by such non-compliance. This, the petitioner has failed to establish, as will be discussed later.

The allegation in sub-paragraph (iii) of paragraph 10 of the election petition is that there was non-compliance with the direction of the Election Commission given under rule 16 (of the Rules, 1951), read with section 56 (of the Act of 1951) at Basatpur M. E. School (booth No. 149), Khairwa L. P. School (booth No. 135) and Pakri U. P. School (booth No. 153). Section 56 of the Act lays down "The appropriate authority shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed: Provided that the total period allotted on any one day for polling at an election in a constituency shall not be less than eight hours". Rule 16 runs as follows "The hours fixed for polling under section 56 shall be published by notification in the official gazette and in such other manner as the Election Commission may direct". Ext. 4 is an extract from the Government notification showing that the Central Government fixed the hours from 8 A.M. to 4 P.M. as the hours during which the poll had to be taken in that constituency. The village notices (Ext. I series) also show the same hours for the poll.

The only evidence regarding non-compliance with the provisions of section 56 of the Act consists of the testimony of P.W. 8, the Presiding Officer of Khairwa L. P. School polling station. He has said that the polling hours fixed were 8 A.M. to 4 P.M., but the polling commenced at 12 noon and was closed at 8 P.M. From his evidence it appears that some voters turned up and cast their votes even after 4 P.M. There must have been some reason why polling commenced at 12 noon, instead of 8 A.M., but the evidence does not throw any light in this matter. It has been argued on behalf of the respondent that there was full compliance with the provisions of the latter part of section 56, namely, that the total period for the polling shall not be less than 8 hours. *Prima facie*, there was no compliance with the provisions of the first part of the section, namely, that the poll will be taken during the hours fixed and published.

The respondent has drawn our attention to Ext. A which is Memorandum of Instructions for Presiding Officers. Paragraph 33 contains instructions regarding commencement of the poll. In the supplementary instructions relating to paragraph 33, it is said "Sometimes, on account of unavoidable reasons or even incompetence or unpunctuality of Presiding Officers or polling officers, polling has not been commenced at the proper hour. This should be avoided by all means. If, however, it happens that polling has, in fact, commenced later than the scheduled hour, the Presiding Officer should continue the polling until the hour fixed for close of poll, and if this does not give the normal full period of polling he should allow polling to continue until such point of time when such full period of polling would be completed. Voters present at the polling station at such adjourned closing hour and waiting to cast their votes should be allowed an opportunity to cast their votes". In view of this supplementary instruction, it may well be contended, as has been done by the respondent, that if the poll actually commenced at a later hour, but the total period of polling was not less than 8 hours, there was substantial compliance with the provisions of section 56 of the Act.

Even assuming that there was no substantial compliance with the provisions of section 56, the petitioner, in order to succeed on this ground, has to establish further that the result of the election has been materially affected by such non-compliance. The petitioner has, as will be discussed later, miserably failed to establish any such thing.

Paragraph (c) of annexure "E", which is said to relate to sub-paragraph (iii) of paragraph 10 of the election petition, recites that, contrary to the direction of the Election Commission and the consequent announcement, polls at certain villages were not held at the places notified. Three instances of change of places have been given. It is alleged that instead of Basatpur M. E. School (149), poll was actually held at Basatpur U. P. School. Similarly poll was held at Khairwa, (240), instead of at Khairwa L. P. School (135). Again, poll should have been held at Pakri U. P. School (153), but it was actually held at Pakri Sanskrit Pathshala. The petitioner has failed to show that the alleged change of booths had any relation to the non-compliance with the provisions of section 56 or rule 16 which have been discussed above. The story of change of booths has not been specifically alleged in the election petition and no indication of such story has been given therein. Further, there is no evidence worth the name to prove that there was change of booths in the villages referred to above.

The petitioner's contention in regard to sub-paragraph (iii) of paragraph 10 of the election petition, sub-paragraph (cc) and paragraph (c) of annexure "E" is, therefore, rejected.

In sub-paragraph (iv) of paragraph 10 of the election petition, it is alleged that there was non-compliance with the provisions of rule 17 (of the Representation of the People Rules, 1951) by reason of the fixing of booths at wide distances at the following polling stations, Pachnaur L. P. School, Asogi Pursottam, Bhakurshar, Nandwara, Jtmuan and Parsauni, and this rendering it impossible for the Presiding Officers to regulate and supervise the polling. Rule 17 provides, *inter alia*, that the presiding Officer shall regulate the number of electors to be admitted at any one time inside the polling station and shall close the polling station at the hour fixed.

Four witnesses have been examined by the petitioner on this point; they are P.W. 3, P.W. 4, P.W. 9 and P.W. 10. P.W. 4 (Jafar Ahmad Mallick) acted as Presiding Officer at Pachnaur polling station. His evidence shows that there were two booths at Pachnaur and they were one mile apart from each other. He was appointed as Presiding Officer for both the booths. One booth was not visible from the other booth. The witness says that he generally remained in booth No. 1 and he visited booth No. 2 twice. From the cross examination of the witness it, however, appears that during his absence from booth No. 2, the senior polling officer of that booth was in charge. From section 26 of the Representation of the People Act, 1951 it clearly appears that, in the absence of the Presiding Officer from a polling booth, his functions shall be performed by a polling officer. In view of the above provisions, it cannot be urged that there was non-compliance with the provisions of rule 17 on account of the fact that the Presiding Officer absented himself for some time from one of the booths of which he was in charge. P.W. 3 also speaks about the absence of the Presiding Officer from booth No. 2 of Pachnaur polling station. This matter has already been discussed above.

P.W. 9 (Soney Lal Jha) acted as Presiding Officer at Nandwara polling station. He was also in charge of two polling booths which were half a mile apart from each other. From his evidence it appears that he generally remained in one booth and visited the other booth only once during the hours of poll and stopped there for a very short time. But the witness has clearly stated in his cross-examination that the senior Polling Officer was entrusted with the work of the Presiding Officer in that booth. For the reasons stated above, we hold that there was no non-compliance with the provisions of rule 17 in regard to this polling station also.

P.W. 10 (Sita Ram Choudhary) claims to be a voter of village Asogi Pursottam. He says in his evidence that there were two booths, one mile apart from each other, in his village, that he went to one of the booths to cast his vote, but could not do so because the Presiding Officer was not there. The senior Polling Officer must have been in charge of that booth during the absence of the Presiding Officer and it is difficult to believe that the work of polling was kept suspended during the absence of the Presiding Officer. We are not inclined to rely upon the evidence of this witness.

The conclusion, therefore, is that it has not been established that there was non-compliance with the provisions of rule 17.

In sub-paragraph (v) of paragraph 10 of the election petition, it is stated that there was non-compliance with the provisions of rule 46 (The Representation of the People Rules, 1951) dealing with the procedure to be followed at the counting of votes. This point has not been pressed and is, therefore, rejected.

Lastly, it is stated in sub-paragraph (vi) of paragraph 10 of the election petition that there was non-compliance with the provisions of rule 24(6) of the Representation of the People Rules, 1950. The above rule provides that spare copies of the electoral roll shall be available for sale to the public until the final publication of the next electoral roll for the constituency.

It is alleged by the petitioner that, in spite of his best efforts, he was not supplied the revised electoral roll, but a copy of the old roll was supplied to him. The petitioner (P.W. 17) has said in his evidence that he applied to the Returning Officer for a copy of the revised electoral roll towards the end of February, 1953, but he was supplied a copy of the old roll. The application dated the 4th March 1953 (Ext. E) of the petitioner to the Returning Officer shows that he asked for a copy of the electoral roll published in 1951. He deposited on the same date the price of the electoral roll by means of Chalan, Ext. F. It appears that no electoral roll was published in the year 1951. The first electoral roll was published in 1950 and the revised electoral roll, according to the petitioner, was published in January, 1953. The documentary evidence, thus, does not support the statement of the petitioner. The petitioner has failed to produce in evidence the electoral roll supplied to him. The contention of the petitioner on this point also fails.

To sum up, the petitioner has failed to prove the alleged non-compliance with the provisions of the Constitution, the Representation of the People Acts, and the rules relating to the election.

Even supposing that there was non-compliance with the provisions of the Constitution, election laws and rules in certain matters, the election of the returned candidate cannot be declared to be void unless it is established further that the result of the election has been materially affected by such non-compliance. The expression "the result of the election has been materially affected", in this context, means that the result of the election would have been different if there had been compliance with the provisions of the Constitution, election laws and rules. Or, in other words, a different candidate, and not respondent No. 1, would have succeeded at the election. It has been pointed out that respondent No. 1 defeated the petitioner by 11,420 votes. The petitioner, in order to succeed, has to establish that on account of the alleged non-compliance he lost more than 11,420 votes. There are no materials on the record on which such finding can be based.

We, therefore, decide these issues also against the petitioner.

Issues Nos. 7 & 8.—In view of the above findings, it must be held that the election in the constituency in question is not wholly void, nor is the election of respondent No. 1 void.

The result, therefore, is that the election petition fails.

ORDER

The election petition be dismissed. The petitioner shall bear his own cost and shall pay Rs. 250/- (Rs. two hundred fifty) as cost to the contesting respondent No. 1.

(Sd.) BASU PRASAD,
Chairman.

(Sd.) HARGOBIND PRASAD SINHA,
Member.

(Sd.) ADITYA NARAYAN LAL,
Member.

PATNA;
The 9th August, 1955.

[No. 82/5/53/9797.]

By Order,
P. S. SUBRAMANIAN, Secy.

